

**REMARKS**

Entry of the foregoing and favorable consideration of the subject application, in light of the following remarks, are respectfully requested.

Claims 1-13 are currently pending. Claims 1, 3, 4, and 12 are amended herein, as depending on claim 1. Basis for the amendments to claims 1 (enumerating the number of subsets of CD4 cells) may be found at least at page 6, lines 16-20. Basis for the amendments to claims 3-4 and claim 12 may be found at least at the Examples of the present specification on pages 13-18 and in Figures 1-3.

Turning now to the restriction requirement, Applicant hereby elects, with traverse, the invention of Group I, as drawn to a method of enumerating the number of CD4 cells in a cell sample (claims 1-2 and 5).

Claim 1 is amended herein to recite enumeration of subsets of cells. Claims 3, 4 and 12 are amended to further depend upon claim 1, in support of the arguments that all of the claims should be rejoined and examined together. At the least, Groups I, II and V should be rejoined and examined on the merits at this time. In other words, Applicant submits that claims 1, 2, 3, 4, 5, 12, and 13 all fall within the subject matter set forth in the outstanding Office Action as comprising Group I.

Regarding claims 3 and 4, Applicant notes that the steps/elements of claims 3 and 4 are further, additional steps to those set forth in claim 1. The method steps of claims 3 and 4 cannot be performed until the method of claim 1 is carried out. In fact, the steps of claims 3 and 4 require some of the cell values resulting from certain steps of claim 1. Thus, claims 3 and 4 fall within the scope of claim 1 and Group I.

Claim 12 also falls within the scope of Group I. Claim 12, as depending from claim 1, further discloses the subsets of cells enumerated in claim 1.

Thus, Applicant submits that the inventions of at least Groups I, II, and V are closely related and that a proper search of any of the claims should, by necessity, require a proper search of the others. Applicant submits that all of the claims can be searched simultaneously, and that a duplicative search, with possibly inconsistent results, may occur if the restriction requirement is maintained.

Applicant submits that any nominal burden placed upon the Examiner to search accordingly to determine the art relevant to Applicant's overall invention is significantly outweighed by the public's interest in not having to obtain and study many separate patents in order to have available all of the issued patent claims covering Applicant's invention. The alternative is to proceed with the filing of numerous applications, each consisting of generally the same disclosure, and each being subjected to essentially the same search, perhaps by different Examiners on different occasions. This process would place an unnecessary burden on both the Patent and Trademark Office and on the Applicant.

Regardless of whether the Groups are independent or distinct, Applicant respectfully asserts that the Examiner need not have restricted the application. MPEP § 803 requires that "[i]f the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." Therefore, it is not mandatory to make a restriction requirement in all situations where it would be deemed proper. In the interest of economy, for the Office, for the public-at-large, and for Applicant, reconsideration and withdrawal of the restriction requirement are requested.

Applicant has no intention of abandoning any non-elected subject matter and expressly reserves the right to file one or more continuation and/or divisional applications directed to the non-elected subject matter.

Applicant earnestly solicits favorable consideration of the above response and early passage to issue the present application. The Examiner is invited to contact the undersigned at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted,

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